CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85624 OF 2014

[Arising out of Order-in-Original No: PUN-EXCUS-001-COM-034-13-14 dated 21st November 2023 passed by the Commissioner of Central Excise, Pune – I.]

Eaton Fluid Power Limited
145 Off Mumbai-Pune Road, Pimpri, Pune – 411 018 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
41-A ICE House, Sasoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri Prakash Shah and Shri Mihir Mehta, Advocates for the appellant

Shri Sunil Kumar Katiyar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85251 /2024

DATE OF HEARING: 04/09/2023
DATE OF DECISION: 01/03/2024

PER: C J MATHEW

The contours of the circumstances in which proceedings were initiated against M/s Eaton Fluid Power Limited, the appellant herein, is the arrangement between them and entities, such as M/s UM High Pressure Hydraulics Pvt Ltd, to whom orders were awarded for manufacture of goods, such as ‘cylinders’, ‘valves’, and ‘hydraulic power packs’, with some material requirements, generally of high value, supplied by the former and the rest, generally of lesser value and comprising the billing too, procured by the latter, on the one hand and, on the other hand, the supply of such finished goods to customers of the appellant against delivery challans for which invoices are raised by the appellant. This business model of the appellant has been held by central excise authorities to be contrived arrangement for availing ineligible credit.

2. The dispute pertain to availment of credit of duty paid on procurement of goods without being reversed on transfer to the contracted manufacturer under procedure prescribed in rule 4(5)(a) of CENVAT Credit Rules, 2004 owing to finished goods not having been returned to supplier and to availment of credit of tax paid on goods that were not received in premises of appellant for which impugned order[1] of Commissioner of Central Excise, Pune-I has directed recovery of ₹ 2,67,44,448 and ₹ 2,41,49,130 respectively for 2008-09 to 2012-34 under section 11A of Central Excise Act, 1944, along with interest under section 11AA of Central Excise Act, 1944, while imposing penalty of like amount, *i.e* ₹ 5,08,93,978, under section 11AC of

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[1] [order-in-original no. PUN-EXCUS-001-COM-034-13-14 dated 21st November 2023]

Central Excise Act, 1944.

3. The allegation against the appellant is that contracted manufacturers of theirs have been erroneously shown as ‘job-workers’ merely to facilitate manufacture elsewhere while availing ineligible credit of duties paid on the goods used for production. It is also alleged that the goods supplied by them are not used for conversion but merely as requirements of vendors who were portrayed as ‘job-workers’ for fitment within such privilege. A further allegation is that the goods manufactured by the vendors are directly used in the ‘power packs’ but the invoices issued to appellant were used to avail credit to which they were not entitled as the goods did not arrive at the premises of the appellant.

4. Learned Counsel for appellant submitted that, generally, ‘electric motors’, ‘heat exchanger’, ‘filters and filter elements’, ‘hydraulic valves’, ‘hydraulic pumps’, ‘manifold blocks’, ‘electric junction boxes’ etc were supplied to their ‘job-workers’ on which CENVAT credit had been availed at the time of procurement and as these were transferred against ‘delivery challan’, owing to which reversal of credit as per rule 4(5)(a) of CENVAT Credit Rules, 2004 was not required. It was pointed out manufacture was effected by ‘job work’ as it occurs in accordance with plans furnished by, and on instructions of, the appellant with consideration being ‘job work’ charges and cost of

materials used in such manufacture entitling excise duty paid thereon to be availed as credit as afforded by CENVAT Credit Rules, 2004. Drawing attention to permission granted by jurisdictional central excise officers for clearance of final product from the premises of 'job worker', it was contended that rule 4(6) of CENVAT Credit Rules, 2004 had been duly complied with.

5. According to Learned Counsel, the notice had erred in reporting that the manufacturer had denied being 'job worker' and it was contended that, even if such statements had been made, independent evaluation on merit and facts was warranted, as held by the Hon'ble High Court of Bombay in *Ghodavari Khore Cane Transport Co. v. Commissioner of Central Excise [2013 (29) STR 31 (Bom)]*, and that reliance could not be placed on statements except after establishing relevancy in terms of section 9D of Central Excise Act, 1944. Arguing that 'job-work' is more of a description of business model than a design for administering central excise levies, it was contended the adjudicating authority appeared to have ignored the definition in rule 2(n) of CENVAT Credit Rules, 2004 and that 'fabrication' and 'assembly' at 'job-worker' end was integral to goods supplied to customers of appellant. Reliance was placed on decision of the Tribunal in *Sam Turbo Industries Ltd v. Commissioner of Central Excise, Coimbatore [2011 (269) ELT 235 (Tri.-Chennai)]*, in *Commissioner of Customs & Central Excise, Bhopal v. Abhinav Chemicals [2012 (284)*

ELT 589 (Tri-Del)] and in *SJS Plastiblends Pvt Ltd v. Commissioner of Central Excise [2019 (9) TMI 275 – CESTAT MUMBAI]*. According to him, the adjudicating authority had erred in concluding that such arrangements did not conform to ‘job work’ commercially.

6. According to Learned Authorized Representative, the impugned order has brought out the ineligibility for credit availed on both counts. Thereafter, he drew attention to the revised practice of the appellant after April 2013 which, in his view, reflected the correctness of the stand on ineligibility that was adopted by the adjudicating authority.

7. The appellant appears to have undertaken supply of equipment to customers for which they contracted with specialist entities which, by using articles supplied by appellant and others manufactured/procured at their end, executed the works for delivery to customers of the appellant. The appellant bore duty liability on materials supplied by them and recompensed the executing entities with cost of other material deployed in finished goods along with contracted charges. The case of central excise authorities is that credit was availed by appellant on both categories of materials of which that pertaining to material supplied by them should have been reversed as the product in which these had been used were not returned to them while other material used by the contracted entity, even though charged to the appellant, was ineligible for availment as these had not been received

in premises of appellant.

8. To fortify the conclusion of ineligibility, the adjudicating authority premised the status of the contracting entity as 'vendor' against the claim of the appellant that these were 'job workers' and, thereby, that appellant is not a manufacturer with consequence of not being covered by CENVAT credit facilitation. Before we proceed to discuss the pros and cons of this exercise, we must necessarily look to the provision that the appellant, according to central excise authorities, was required to be compliant with.

9. It must be made clear that Central Excise Act, 1944 is a law empowering levy and collection of an indirect tax on manufacture and is not a law for governing and regulating commercial engagements and practices. As a tax law, its enforcement is concerned with recovery of duties upon occurrence of taxable event and any deprivation to, and burdening of, an assessee must be determined only within that purposive framework. The law recognizes 'job worker', not in terms of contractual relationship or commercial comprehension of the expression, only as an entity, otherwise liable to duties of central excise devolving on manufacture, eligible to be relieved of that burden upon assumption of such obligation by the principal manufacturer; all other terms and conditions – which are part and parcel of the enabling exemption notification – are merely safeguards to ensure that the liability arising on

taxable event is not alienated from both. It would appear that the extension of this 'conceptual intermediate' to CENVAT credit scheme has been visualized by tax authorities as external to, and independent of, this tax framework and, probably, owing to its insertion in Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 much after its original notification seemingly as according it a legal status beyond that of deferment in the scheme of central excise. That perception appears to overlook the limited placement of such entity, defined for such purpose, in the context of 'assessee' deployed for the limited purpose of, and in, section 4 of Central Excise Act, 1944.

10. Effectively, therefore, a 'job worker' remains one if finished product is not cleared by them but on behalf of another. There is no other construct for 'job worker' insofar as obligation under Central Excise Act, 1944 is concerned and this reaches down to CENVAT Credit Rules, 2004. 'Vendor' is not an entity recognised by, or amenable to recognition in, Central Excise Act, 1944. That having been said, we are foreclosed from determining the status of the contracted entities for want of finding on the devolution of liability to duties of central excise on the goods supplied to customers of the appellant. All that is available on record is that the goods are delivered from premises of contracted entity directly to that of customer against 'delivery challan' that the appellant relies upon for raising invoice on the customer. The principle of 'he who pays the duty is entitled to avail credit of 'inputs' used in manufacture of goods upon clearance' does not

appear to have guided the determination of this dispute.

11. Underlying the existence of CENVAT credit scheme is the empowerment vested by law to prescribe the manner of payment of duty, which itself is a function of classification, in terms of the charging provision, and value, in terms of the valuation provision, comprising actual payment and debit of CENVAT balance. The scheme enables bridging of the charging and valuation provisions to restrict the collection of duty to 'value added' by a manufacturer. CENVAT Credit Rules, 2004 is a compilation of machinery provisions for operation of the scheme. The principle of 'manufacturer being charged to duty on manufacture' is the tool to interpret ambiguity, if any, in the said Rules, and not appearing to have impressed itself on the adjudicating authority evident from the stated preference for assigning expression unacknowledged by law, precludes us from applying the test in the absence of the first finding as noted by us *supra*.

12. The CENVAT credit scheme rests upon availment of credit and its continued existence till utilization; there is, therefore, 'threshold' entitlement flowing from rule 3 of CENVAT Credit Rules, 2004 and 'retention' eligibility flowing from rule 4 and rule 6 of CENVAT Credit Rules, 2004. The threshold entitlement of credit of ₹ 2,67,44,448 is not in dispute and it is only its continued retention, after the goods were dispatched to contracted entities, which has been sought to be disallowed owing to the finished goods not having been returned to the appellant or, in

the alternative, its actual deployment in the finished product having been demonstrated. In doing so, the adjudicating authority has discarded the permission accorded by jurisdictional office for clearance from the premises of the contracted entity and, that too, by disclaim of 'job worker' status. We have already observed the deficit in that finding of the adjudicating authority. Insofar as the alternative for establishing right to retain credit is concerned, the adjudicating authority has relied upon statements that, as correctly pointed out by Learned Counsel, had not undergone the test of 'relevancy' prescribed in section 9D of Central Excise Act, 1944. We do not find any elaboration about the finished product in the impugned order that could lead us to conclusion on the right or wrong of retention of credit to the extent denied by the adjudicating authority.

13. The availment of credit of ₹ 2,41,49,130 rests upon rule 3 of CENVAT Credit Rules, 2004 which is predicated upon discharge of duty liability and upon conformity with 'inputs' in rule 2 thereof. The denial has been grounded on non-receipt at premises of the appellant. In doing so, the adjudicating authority has not examined the implied extending of the premises of 'manufacturer' to that of 'job-worker' which is implicit in the excise duty liability revolving on 'job-worker' that becomes eligible credit in the account of the principal manufacturer upon bearing incidence of duty liability. That the impugned order has discarded claim of 'job-worker' status, and inadequately so, as already discussed by us, precluding consideration of this eligibility hinders us

from deciding thereto warrants rectification.

14. Owing to the above deficiencies, the dispute warrants fresh determination within the framework of our observations. Accordingly, we set aside the impugned order and remand the matter back to the adjudicating authority for fresh disposal. In view of existence of CENVAT credit scheme on 'life support system', we direct that the disposal be completed within 90 days of this order.

(Order pronounced in the open court on 01/03/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*